

The most favored customers rates and charges shall consist of the lowest rates and charges Company is then receiving for dark fiber or lit capacity, as the case may be, from among its existing customers with contracts of comparable duration, inclusive of discounts for volume or other reasons. If there are no existing customers at such time, then the most favored customer rates and charges shall consist of the lowest rates and charges then shown on Company's schedule of rates and charges described in Section 7.7 for contracts of comparable duration. Rates and charges applicable to State shall be subject to change during the contract term to the same extent, and only to the same extent, as required of the most favored customers or similarly situated customers, as the case may be, having contracts of comparable duration.

(v) If lit capacity is requested and available, Company, in cooperation with State, at State's expense and in accordance with normal business practices, shall promptly and diligently prepare Plans and Specifications for necessary Equipment, Equipment configurations and related improvements, which Plans and Specifications shall be subject to State's written approval, not to be unreasonably withheld. Company shall make all changes to the Plans and Specifications which State reasonably requests.

(vi) If dark fiber is requested and available and if State approves in writing the rates and charges therefor, then Company thereupon shall deliver the dark fiber capacity to State on the terms set forth in this subsection (d).

(vii) If lit capacity is requested and available, if State approves in writing the rates and charges therefor, and State approves in writing the applicable Plans and Specifications therefor, then Company thereupon shall immediately and diligently proceed to procure and install any required Equipment and other improvements in accordance with such Plans and Specifications and the provisions of Sections 5.3 and 5.8(d), (f), (h) and (i), which shall apply to such work, shall undertake the procedures for Substantial Completion, testing, cutover and Acceptance in accordance with the provisions of Article VI, which shall apply to such work, and upon successful testing shall cutover service and deliver the lit capacity to State.

(viii) State shall have exclusive ownership, control and use of any additional capacity procured under this subsection (d) for all the purposes set forth in Section 3.4.

(e) ITS and TMC.

(i) In addition to the design and construction of Phase 1 of the Network, if Company and S&W commence construction of Phase 1, Company and S&W shall provide up to \$5 million worth of design and construction services for installing fiber optic cable, Nodes and related Equipment for MnDOT ITS applications, for interconnecting ITS applications with the TMC and/or for accommodating other MnDOT uses and needs. Company and S&W are obligated to procure and install only Equipment of the type included in the Network design. MnDOT may elect to provide some or all of the design and engineering work rather than use the design and engineering services of Company and S&W. Company and S&W shall have no

liability, by way of warranty or otherwise, for design and engineering work MnDOT elects to perform.

(ii) Company and S&W shall provide such services according to the schedule described in Section 10.5(b). Prior to Commencement of Construction for Phase 1, State, Company and S&W shall negotiate in good faith milestones for commencing liquidated damages for failure to achieve Substantial Completion, required test results and delivery to State of designated portions of such ITS and TMC work and a related schedule of per diem liquidated damages. The agreed-upon milestones and schedule of liquidated damages shall be set forth in a written modification to this Agreement. The milestones and schedule of liquidated damages shall be subject to the approval of State, Company and S&W, each in its good faith discretion.

(iii) MnDOT shall determine and advise Company and S&W of the routes and locations for the fiber optic cable, Nodes and related Equipment and provide Company and S&W with basic design criteria in connection therewith. MnDOT shall provide such information in sufficient time to allow Company and S&W to perform necessary design and engineering (which MnDOT does not elect to perform itself) and to prepare Plans and Specifications therefor consistent with their schedule for Commencement of Construction of Phase 1. If MnDOT does not elect to perform design and engineering work itself, then upon receipt of such information, Company and S&W, in cooperation with MnDOT, shall promptly and diligently prepare Plans and Specifications for the same, which Plans and Specifications shall be subject to MnDOT's written approval, which shall be based on the requirements set forth in Sections 5.3(a) and (b). Company and S&W shall make all changes to the Plans and Specifications which MnDOT requests.

(iv) Company shall price such design and construction services as follows:

(A) where the subject improvements are to be collocated with other portions of Phase 1 or Phase 2 of the Network, at the lesser of (I) Company's Incremental Cost, using the unit prices or other pricing mechanisms for the work under this subsection (e) set forth in the Key Contract between Company and S&W or (II) actual cost of S&W, including reasonably allocated wages, salaries, compensation and overhead of staff and employees, plus a profit equal to 5% of such actual costs;

(B) where the subject improvements are not to be collocated with other portions of Phase 1 or Phase 2 of the Network, at actual cost of S&W, including reasonably allocated wages, salaries, compensation and overhead of staff and employees, plus a profit equal to 5% of such actual costs; and

(C) for subject improvements in excess of \$5.5 million (as priced under items (A) and/or (B) above, as applicable), at the rates and charges established under the Key Contract between Company and S&W for comparable work and materials.

(v) Concurrently with its submission to MnDOT of Plans and Specifications (if not sooner provided under the Key Contract between Company and S&W), Company shall

submit to MnDOT a detailed pricing proposal for the requested improvements and such evidence as MnDOT reasonably requests of Company's and S&W's compliance with the pricing methods required under subsection (e)(iv) above. Company and S&W also shall submit modifications to the pricing proposal in connection with any changes to the Plans and Specification which MnDOT requests. Any disputes regarding pricing shall be resolved by the applicable dispute resolution mechanisms set forth in Section 16.7.

(vi) If the pricing finally established exceeds \$5 million, MnDOT either shall change the scope of the work to eliminate the excess or approve the Plans and Specifications and pricing for the subject work and pay the excess according to the pricing under subsection (e)(v) above. Payments of any such excess shall commence only after the first \$5 million of work and services are satisfactory performed. Payments of any such excess shall be subject to State's standard rules and procedures for payment for construction services, including but not limited to a 10% retention payable within 30 Days after all work is completed and accepted.

(vi) Upon MnDOT's written approval of the Plans and Specifications and pricing proposals, Company and S&W shall immediately and diligently proceed to construct the improvements in accordance with such Plans and Specifications and the provisions of Sections 5.3 and 5.8(d), (f), (h) and (i), which shall apply to such work, shall undertake the procedures for Substantial Completion, testing, cutover of service and Acceptance in accordance with the provisions of Article VI, which shall apply to such work, and upon successful testing shall cutover service and deliver such improvements and the capacity thereof to MnDOT.

(vii) State shall have exclusive ownership, control and use of the capacity of such improvements for all the purposes set forth in Section 3.4.

(f) Rest Areas, Travel Centers, Local Facilities and Mn/ROAD Site. Company and S&W shall provide, as part of Phase 1 of the Network, pull boxes and fiber optic cable at 34 of the 39 roadside rest areas, travel information centers, local motorist information facilities and Mn/ROAD site set forth in Table D of Exhibit A and, if any Optional Phase 1 Route is constructed, at each of the roadside rest areas and travel information centers along such route set forth in Table E of Exhibit A. Prior to Commencement of Construction, State shall select, in its sole discretion, which 34 of the 39 locations shown in Table D of Exhibit A are to be served and deliver to Company and S&W written notice of its selections. Pull boxes shall be located conveniently to serve each of the 34 selected locations. Fiber cable for each cross-roadway area shall be run to the boundary line of such area with an approximate count of 12 dark fibers.

(g) Equipment Huts and Pedestals. Company and S&W shall construct and provide equipment huts and pedestals at each Node of Phase 1. The equipment huts and pedestals shall be sized at least to the dimensions set forth in Exhibit A. Company shall identify in the Plans and Specifications the space in each equipment hut and pedestal to be used for placement of Equipment or the equipment of Collocating Customers or State to be installed as part of Phase 1 construction. Company shall dedicate approximately 20% of the equipment mounting space for State equipment (not to be less than one equipment cabinet in huts and one rack section in

pedestals). Company shall, in locating its Equipment, seek to accommodate State's anticipated use. If despite such accommodation and the foregoing required dedication of equipment mounting space for State equipment there is insufficient space in any hut or pedestal to locate State's equipment, State and Company shall re-design such hut or pedestal to increase its size to accommodate both State's and Company's use; and State shall pay to Company the Incremental Cost for sizing of huts and pedestals beyond the size set forth in Exhibit A in order to accommodate State's equipment.

(h) Equipment Purchases. State shall have the right, but not the obligation, throughout the Term, to purchase telecommunications equipment from or through Company. Whenever State exercises this right, the price charged to State shall equal Company's Incremental Cost for such equipment. State reserves the right to purchase equipment from vendors other than Company's vendors. Purchasing through Company does not invoke any warranties by Company or S&W.

(i) Phase 2 Capacity. If Company elects in its sole discretion to construct or add to the Network any portion of Phase 2, then:

(i) Company shall provide to State an average of 10% of all existing and future lit capacity thereof, and up to 20% of all existing and future lit capacity thereof on any particular route, subject to the following terms and conditions:

(A) State's 10% share of such capacity shall consist of both physical capacity, including but not limited to conduit innerducts and equipment mounting locations, and electronic capacity, including that of fiber optic cable and Equipment;

(B) Company shall be required to provide such capacity only with respect to fiber which is interconnected electronically or optically to Phase 1;

(C) State's right to its share of future lit capacity includes capacity created by virtue of placing additional fiber strands in service, by virtue of increasing the capacity of Equipment already serving lit fiber strands on Phase 2 or by virtue of technology upgrades; and

(D) the provisions on notice of future lit capacity set forth in subsection (b) above shall apply to future lit capacity on Phase 2;

(ii) Company shall deliver to State on the Cutover Date for each portion of Phase 2 (except any leased lines) four dark fiber strands throughout such portion and regardless of the number of fiber strands in such portion. State shall have the exclusive ownership, control and use of the four dark fiber strands for all the purposes set forth in Section 3.4 throughout the balance of the Term. Company shall make the dark fiber strands accessible to connect to State-provided equipment located in Phase 2 huts and pedestals. Dark fiber provided hereunder shall not be included in the computation of capacity for purposes of subsection (i)(i) above;

(iii) at State's request, Company shall construct and provide to State additional Nodes on any portion of Phase 2 in locations State reasonably designates. The design of each Node shall be subject to State's written approval, which State shall not unreasonably withhold or delay, and shall include equipment huts and pedestals sufficient in size to accommodate State's current and future anticipated use. State shall pay to Company the Incremental Cost of designing and constructing each requested Node. Payment shall be subject to State's standard rules and procedures for payment for construction services, including but not limited to a 10% retention payable within 30 Days after the work is completed and accepted:

(iv) the terms and provisions of subsections (d), (g) and (h) above shall apply to each portion of Phase 2 in which State is entitled to a share of capacity under this subsection (i); provided that with respect to subsection (g) above a 10% figure shall apply to Phase 2; and

(v) if any portion of the route by which a portion of Phase 2 is electronically connected to Phase 1 consists of leased lines or facilities, State shall pay for its usage of such leased lines or facilities.

(j) Determination of Average Use. State and Company shall cooperate in good faith to develop fair and equitable means to measure and determine the State use of capacity on various Network routes and rings and the average State use of capacity to which it is entitled under subsections (a), (b) and (i) above. State and Company shall cooperate in good faith to mutually determine fair and equitable time periods over which average usage should be measured.

(k) Collocating Customer Fiber; Acquisition or Exchange of Fiber. Fiber cable installed for Collocating Customers in accordance with Section 5.11 shall not be included in determining State's share of Network capacity under this Section 3.3, unless State and Company otherwise agree in connection with any evaluation under Section 3.1(b)(ix).

(l) Multiple Fiber Types. If two or more types of fiber are included in any portion of the Network, State shall receive its share of dark fiber with respect to each type of fiber. If the foregoing allocation results in an odd whole number or fractional strands of fiber, then the odd whole number or fractional strands shall be reallocated into whole even numbers, rounding up to an even whole number of superior types of fiber if the allocation results in a number of superior types of fiber equal to or exceeding an odd whole number but less than an even whole number, and rounding down to an even whole number of superior types of fiber if the allocation results in a number of superior types of fiber greater than an even whole number but less than an odd whole number; provided that in any event State shall receive not less than one pair of the superior type of fiber. (For example, if 12 of 48 strands (i.e., 25%) are a superior type of fiber and the balance are an inferior type of fiber, then of the 10 dark fiber strands State is to receive under subsection (c) above, two shall be the superior type of fiber and eight shall be the inferior type of fiber. If 18 of 48 strands (i.e., 37.5%) are a superior type of fiber and the balance an

inferior type of fiber, then of the 10 State dark fiber strands, four shall be the superior type of fiber and six shall be the inferior type of fiber.)

Section 3.4 State Use of Network. State shall have the unfettered right to use or make available use of the Network for, and only for (a) communications by, from, to, between or among any of the agencies and entities which are eligible to participate in MNet under applicable Laws and Regulations, including but not limited to those agencies and entities described in the definition of MNet and (b) communication services for MnDOT and its Intelligent Transportation Systems. Except for uses permitted under subsections (a) and (b) above, in no event shall State use or make available use of the Network for commercial purposes.

MNet hubs, MnDOT regional offices, the TMC and ITS applications operated by the TMC or otherwise connected at Nodes.

(c) Company may locate Equipment within State-owned buildings subject to the following terms and conditions:

(i) all such locations shall be subject to availability of space and subject to the prior written approval of and terms and conditions imposed by the State agency which owns, controls or manages the building in question;

(ii) if MnDOT or DOA owns, controls or manages the building in question, it shall not arbitrarily withhold approvals and shall limit rent or other fees for such use to \$100 per month per building at such location;

(iii) Company shall not commence construction or locate Equipment until the applicable State agency approves in writing final plans and specifications for the use;

(iv) Company shall accept the space in its "AS IS" condition, with all faults and defects, known or unknown, and without representation or warranty as to suitability or fitness for purpose or of any other kind, express or implied.

(v) Company at its sole expense shall be responsible for bringing necessary power, electricity and other utilities to the location, at its sole expense shall install separate meters and submeters to measure utility consumption and shall pay all costs of utility consumption by or for its Equipment or relating to the subject space:

(vi) State shall have no liability for any damage to or destruction of the Equipment or other property of Company, of Collocating Customers or of any other users for loss of service over the Network or Collocating Customer facilities due to any such damage or destruction, or for injury to or death of any employees, invitees, agents, contractors or representatives of Company, Collocating Customers or other users at the subject site, regardless of the negligence of State or any employee, agent or representative of State and regardless of any contrary provisions in Section 13.3 or 13.5(d) or elsewhere in this Agreement; and

(vii) State shall have the right to require relocation from such space at any time, in which case the rights and responsibilities of State and Company regarding costs of relocation shall be governed by Section 11.2(d).

Section 5.3 Design and Construction Standards.

(a) Subject to subsection (b) below, in causing or permitting the design and construction of the Network, Company and S&W shall conform to:

(i) if applicable, the environmental documents approved and design decisions made under MEPA and NEPA and any addenda and supplements thereto;

- (ii) The Network architecture and topology required pursuant to Section 5.1;
 - (iii) The Equipment configuration required pursuant to Section 5.2;
 - (iii) the Laws and Regulations;
 - (iv) all Regulatory Approvals, including but not limited to the Permits;
 - (v) the manuals, standards, criteria, requirements and procedures set forth in Exhibit B, as they may be revised from time to time;
 - (vi) generally recognized cost effective advances and improvements in technology, materials and equipment applicable and available from the Equipment vendor Company and S&W select; and
 - (vii) generally accepted standards and practices applicable to the design, engineering and construction professions, subject to approved deviations under subsection (c) below.
- (b) The requirements set forth in subsection (a) above are subject to the following:
- (i) to the extent the procedures set forth in Exhibit B vary from the procedures required to be followed under this Agreement, the procedures required to be followed under this Agreement shall control so long as Company and S&W comply with all worksite safety standards;
 - (ii) in accordance with the Utility Accommodation Policy, Company and S&W must obtain MnDOT's approval of the location and design of any improvements or installations on a bridge or other structure which carries a Freeway roadway or ramp;
 - (iii) fiber optic cable, conduit and innerducts shall be placed on a uniform alignment near the Right of Way line and buried generally at 42 inches below grade and in any event not less than 36 inches below grade, unless MnDOT grants a variance pursuant to subsection (d) below;
 - (iv) warning tape shall be placed a minimum depth of 12 inches below the existing grade and above the fiber optic cable, conduit and innerducts; and
 - (v) Company and S&W shall be responsible for all traffic control related to its work during construction and any maintenance, repair or replacement, as set forth in the Permits.
- (c) Company and S&W may apply to State (through the State Project Manager) for deviations from applicable design standards or construction standards. All applications shall be in writing and shall include justification for the request, addressing safety and cost considerations. State shall have no obligation to approve any such application and Company and S&W shall bear the burden of persuading State, consistent with generally accepted engineering

agreed changes, the modifications, if any, to the Schedule of Performance for other affected portions of the Network, and the amount to be charged for the State Major Change.

(c) After the State approves a State Major Change pursuant to subsection (b) above, Company and S&W shall construct, install, inspect and test the State Major Change according to the schedule of performance therefor and all other terms and conditions of this Agreement applicable to construction, installation, inspection and testing.

Section 5.11 Optional Phase 1 Routes.

(a) The parties acknowledge that State has a strong need to add fiber optic capacity along Optional Phase 1 Routes to support ITS and other State telecommunications needs and to have such fiber optic system managed and maintained by a single point of control and contact in order to protect public safety and promote efficient management of its Right of Way. Company has a strong desire to include Optional Phase 1 Routes in the Network if financially feasible, but cannot undertake such obligation as of the Agreement Date. In order to induce Company to include the Optional Phase 1 Routes, so that State's needs can be accomplished, State grants to Company the option and right of first negotiation set forth below.

(b) Company shall have the option, but not the obligation, to include in Phase 1 of the Network any or all of the Optional Phase 1 Routes. Company's option under this subsection (a) to include an Optional Phase 1 Route shall automatically expire, without notice or demand, if Company for any reason has not, on or prior to December 31, 1999, (i) delivered to State written notice of its election to include it in Phase 1 and (ii) satisfied all conditions precedent to Commencement of Construction thereof, as set forth in Section 5.5. If Company timely exercises its option as to any Optional Phase 1 Route, Company shall be obligated to achieve with respect thereto Substantial Completion, required test results and cutover of service to State according to the same milestones (including liquidated damage milestones) as set forth in the Schedule of Performance for the balance of Phase 1. Upon expiration of such option as to any Optional Phase 1 Route, no party to this Agreement shall have any further rights or obligations respecting the Optional Phase 1 Route except as provided in subsection (c) below, and the Optional Phase 1 Route shall cease to be subject to Section 11.1 as provided in Section 11.1(d).

(c) Company shall have and is hereby granted a right of first negotiation with the State for the purpose of designing, permitting, installing, constructing, administering, managing, operating, maintaining, repairing and replacing any Optional Phase 1 Route for which Company does not timely exercise its option under subsection (b) above, subject to the following terms and conditions:

(i) such right of first negotiation shall commence as to any such Optional Phase 1 Route when its option with respect thereto under subsection (b) above expires without exercise, and shall expire on the first to occur of (A) ten years after the last Acceptance Date for Phase 1 or (B) termination of this Agreement for any reason;

(ii) if at any time during the period this right of first negotiation is in effect as to an Optional Phase 1 Route either (A) State desires to offer, or solicit proposals for, the use of such Optional Phase 1 Route for the installation of fiber optic cable and related equipment or (B) Company desires to add such Optional Phase 1 Route to the Network, State or Company, as the case may be, shall first deliver to the other party written notice of such fact;

(iii) for a period of 120 Days after the delivery of any such notice, Company and State shall engage in good faith negotiations concerning the selection and obligations of the contractors under all Key Contracts for the design, engineering and construction work, the construction schedule and milestones for Substantial Completion, liquidated damages, Cutover Dates and Acceptance, and liquidated damages formulas for failure to satisfy construction schedule milestones, without obligation, however, to agree upon any particular terms or conditions. If the parties reach agreement upon such terms and conditions, then they shall execute and deliver a binding, written modification to this Agreement setting forth such terms and conditions respecting such Optional Phase 1 Route, and thereupon it shall be deemed included in Phase 1 of the Network for all purposes under this Agreement, and automatically become subject to all the other terms and conditions applicable to Phase 1 of the Network under this Agreement, including but not limited to State's rights under Section 3.3 (except Section 3.3(i)), the provisions of Section 5.12 and Company's rights under Section 11.1; and

(iv) upon expiration of the right of first negotiation, or upon any earlier expiration of the 120-Day negotiating period without consummation of a modification to this Agreement, as to any Optional Phase 1 Route, Company shall have no further rights or obligations respecting the Optional Phase 1 Route, and State shall be free to use such Right of Way on its own, and/or to offer and grant access to such Right of Way to any other party on any terms, to install and use fiber optic facilities.

Section 5.12 Facilities for Collocating Customers. Company acknowledges that State desires Company to install Collocating Customer facilities to enhance competition and service within an already competitive State telecommunications market. State acknowledges that Company may need agreements with Collocating Customers and the revenues therefrom to make feasible the provision of fiber optic cable to rural areas and the provision of a new, competitive telecommunications network in the State. Accordingly, Company shall have the obligation and right to install fiber optic cable and related equipment for Collocating Customers which execute User Agreements on terms acceptable to Company and in compliance with Section 7.7, on the following terms and conditions:

(a) the fiber optic cable must be separate and distinct from, collocated with and installed concurrently with Company's installation of the fiber optic cable for the Network, so that multiple entries and construction activities on the Right of Way are avoided;

(b) such fiber optic cable must be owned and operated by the Collocating Customer separately from the Network;

(c) the Collocating Customer must first enter into a User Agreement in accordance with Section 9.2;

(d) all installations for Collocating Customers within Right of Way or on other State property shall be shown in plans and specifications which shall be subject to State's review, comment and approval or disapproval pursuant to Section 5.4(c);

(e) State shall have the right to limit the locations of Collocating Customer nodes and equipment on Right of Way and/or to require that such nodes and equipment be located off of Right of Way;

(f) State's right of access to and use of space in Company's huts and pedestals shall take priority over any such use for Collocating Customer equipment;

(g) all construction and installation work for Collocating Customer facilities located in Right of Way or on other State property shall be performed solely by Company and S&W and their respective subcontractors;

(h) Company and S&W shall not be entitled to any extension of the Schedule of Performance on account of the design or installation of Collocating Customer facilities without State approval in its sole discretion;

(i) in the event State requests a State Major Change to the Network which incidentally requires a change to the plans for or construction of Collocating Customer facilities, State shall not be responsible for any changes respecting the Collocating Customer facilities;

(j) at MnDOT's request, the Collocating Customer shall obtain as-built Permits from MnDOT for its completed facilities;

(k) relocation of Collocating Customer facilities shall be governed by Section 11.2(i);

(l) no Collocating Customers, and no officers, employees, agents or contractors of Collocating Customers (other than Company and its contractors) shall have any right of entry or access onto Right of Way, except as expressly provided otherwise in Section 9.2(g); and

(m) the Collocating Customer facilities shall be subject to removal from Right of Way and other State property in accordance with Section 15.4(d).

ARTICLE VII OPERATIONS, ADMINISTRATION, MAINTENANCE AND REPLACEMENT

Section 7.1 Company Responsibility.

(a) Throughout the Term Company, at its sole cost and expense, shall bear full responsibility for operating, administering, maintaining, repairing and replacing, or causing to be operated, administered, maintained, repaired and replaced, the Network, in accordance with the terms and conditions of this Article VII, the terms and conditions of all Permits and other Regulatory Approvals, the Utility Accommodation Policy, and all other applicable Laws and Regulations. Notwithstanding the foregoing, Company shall have no obligation:

(i) to operate State's dark fiber strands; or

(ii) to operate, administer, maintain, repair or replace any portion of the ITS and TMC work performed pursuant to Section 3.3(e), except maintenance, repair and/or replacement (A) where required due to defect in Company's or S&W's design, location, construction, engineering, materials, equipment or workmanship and (B) for any fiber which is collocated with Network fiber.

(b) Without limiting the foregoing, Company agrees and acknowledges that (i) the fiber optic lines to be installed for the Network or for Collocating Customers will constitute an "underground facility" as defined in Minnesota Statutes 216D.01, Subd. 11, (ii) Company will be an "operator", as defined in Minnesota Statutes 216D.01, Subd. 9, of such fiber optic lines and (iii) with respect to such fiber optic lines Company shall be subject to all the obligations and liabilities imposed upon operators pursuant to Ch. 216D, Minnesota Statutes. Company shall perform and comply with all such obligations. Upon request of Company, MnDOT shall assist Company in obtaining the form of operator's notice.

Section 7.2 Performance Standards.

(a) Attached to this Agreement as Exhibit C are preliminary Performance Standards for the Network. Prior to Commencement of Construction for Phase 1, Company shall prepare proposed final detailed Performance Standards setting forth the minimum standards and criteria for the performance and operation of the Network for the benefit of State. The final Performance Standards shall embody the requirements for Company to create and administer a continuously operating, redundant and fail-safe backbone communications transport facility for State. The final Performance Standards shall be consistent with Exhibit C, unless otherwise agreed to in writing by State and Company. The final Performance Standards shall be subject to the prior written approval of State, which approval State shall not arbitrarily withhold or delay. Company shall be obligated to satisfy the Performance Standards throughout the Term after the first Cutover Date.

(b) Prior to commencement of Construction for Phase 1, State, Company and the contractor under the Key Contract for O,A&M shall negotiate in good faith a schedule of per hour and per diem liquidated damages which shall be owing for specified failures to satisfy Performance Standards, including but not limited to interruptions in transmission capacity and catastrophic service failures. The agreed-upon schedule of liquidated damages shall be set forth in a written modification to this Agreement. The schedule of liquidated damages shall be subject to the approval of State, Company and such contractor, each in its good faith discretion.

(c) At all times from and after the first Cutover Date and until five years after the last Acceptance Date for Phase 1, Company shall maintain or cause to be maintained in full force and effect, from the approved contractor under the O,A& M Key Contract or other financially responsible third party acceptable to State in its sole discretion, a written warranty and guaranty of performance of the Network in accordance with the Performance Standards, encompassing all Claims respecting performance of the Network made during the warranty period. The warranty and guaranty shall include any failures of performance by reason of, among other things, any defects or deficiencies in design, engineering, installation or construction of the Network. The warranty and guaranty shall be for the direct benefit of the State and Company and in form acceptable to the State and Company each in its good faith discretion.

(d) State's review and approval of the final Performance Standards and the performance warranty and guaranty, and agreement upon a schedule of liquidated damages shall not in any manner waive, alter or diminish:

(i) the obligations of Company to satisfy the Performance Standards, the obligations of S&W under the S&W Guaranty or the obligations of State to Company and S&W;

(ii) the rights, remedies and protections of State under this Agreement or the S&W Guaranty; and

(iii) the full force and effect of Section 13.1.

(e) State and Company, working together cooperatively, shall appropriately modify the final Performance Standards from time to time during the Term as and when changes and technology upgrades to the Network are implemented, in order to maintain consistency with such changes and technology upgrades. In no event, however, shall a Performance Standard be weakened by reason of a change or technology upgrade to the Network. Except for the foregoing, neither party shall have any right to require modifications to the final Performance Standards.

Section 7.3 O,A&M Plan.

(a) Prior to Commencement of Construction for Phase 1, Company, in conjunction with the contractor under the Key Contract for operation, administration and maintenance of the Network, shall prepare a proposed detailed O,A&M Plan. The O,A&M Plan shall be consistent with and designed to assure satisfaction of the Performance Standards. The O,A&M Plan shall

be subject to the prior written approval of State in its good faith discretion, which approval State shall not arbitrarily withhold or delay.

(b) As guidance to the parties, the O.A&M Plan should incorporate provisions similar to some or all of the following:

(i) Specific maximum times for responding to and curing specified types of service failures;

(ii) a detailed maintenance schedule for all Network systems, components and Equipment, including both routine and emergency procedures and timing of prior notice to State of scheduled and unscheduled work;

(iii) a detailed manual on operating and administrative procedures and staffing to be located and responsibilities to be carried out at the Network operations center;

(iv) detailed procedures for operating, monitoring and responding to the Network alarm system;

(v) detailed standards and procedures for accessing the Network, and limitations on the times of day for accessing the Network for routine, preventive or scheduled maintenance, repair and replacement, consistent with the terms and conditions of the Permits and the Utility Accommodation Policy and with State's need to assure public safety in and efficient management of the Right of Way;

(vi) minimum requirements under which Company or its vendors shall inventory, and general locations for storing and staging such inventory of, materials, components, Equipment and supplies for maintenance, repairs and replacements, based on a stated analysis of expected useful lives of such components, Equipment and supplies;

(vii) required minimum distances of the offices of operations, administration and maintenance service personnel from key, designated points on the Network;

(viii) Equipment and other manufacturers' suggested spare parts lists and maintenance and operating procedures;

(ix) a minimum requirement for monthly meetings with State network operations staff to review service levels, problem logs and related matters; and

(x) a minimum requirement for monthly reports to State on Network performance, problem status and volumes, and use of State's allocated capacity.

(c) State's review and approval of the O.A&M Plan shall not in any manner waive, alter or diminish:

(i) the obligations of Company to satisfy the Performance Standards, the obligations of S&W under the S&W Guaranty or the obligations of State to Company and S&W;

(ii) the rights, remedies and protections of State under this Agreement or the S&W Guaranty; and

(iii) the full force and effect of Section 13.1.

(d) Company shall propose modifications, supplements and clarifications of the O.A&M Plan whenever Company or the State Project Manager determines that the O.A&M Plan is insufficient to satisfy the Performance Standards, whenever Company elects to construct an Optional Phase 1 Route pursuant to Section 5.11(a) or (b) or whenever a Construction Segment of Phase 2 is to be added to Network operations. Company may propose modifications, supplements and clarifications to the O.A&M Plan at any time Company desires to upgrade or improve procedures or efficiency for operations, administration, maintenance, repair or replacement, provided that such modifications, supplements and clarifications shall at all times be consistent with and designed to assure satisfaction of the Performance Standards. Major modifications, supplements and clarifications shall be subject to the prior written approval of State, which shall not be unreasonably withheld or delayed.

(e) Company shall implement the approved O.A&M Plan, as it may be modified, supplemented or clarified from time to time, throughout the Term after Acceptance of Phase 1 of the Network.

Section 7.4 Entry onto Right of Way.

(a) Company shall not share with other persons or entities access to any trenches, innerducts, conduit or cable Company or S&W constructs or installs for the Network; provided that:

(i) in accordance with Section 5.11, Company and its contractors may install fiber and equipment of Collocating Customers concurrently with construction and installation of the Network;

(ii) Company may permit access by Company's maintenance and operation contractors via manholes and other access points for the purpose of operating, administering, maintaining, repairing and replacing the Network and the fiber cable and equipment of Collocating Customers, subject to the terms and conditions of all Permits and other Regulatory Approvals and this Section 7.4; and

(iii) State shall have full rights of access as provided in this Agreement, Permits or Laws and Regulations.

(b) Company shall not use or occupy the roadway portion of any Freeway Right of Way to obtain access to the Network or the fiber cable and equipment of Collocating Customers

for performing operations, maintenance, repair or replacement, unless expressly approved by MnDOT in writing, such approval not to be arbitrarily withheld or delayed, or in the Permit conditions.

(c) Company and any of its contractors performing maintenance and operations within or on any Non-Freeway Highway, including ramps, feeders, interchanges or connectors into any State Trunk Highways or related transportation facilities, shall conform to then applicable published MnDOT standards relative to signing, cone and barricade placement, equipment requirements, traffic control methodology, traffic control plans and safety standards.

(d) All operations and maintenance equipment of Company or its contractors operating within any Right of Way shall be marked and all maintenance personnel shall wear colors, lettering, badges or other identifiers on uniforms, to assure clear differentiation from operations and maintenance equipment owned by MnDOT and from uniforms worn by MnDOT employees.

Section 7.5 Monitoring Performance.

(a) State shall have the right at any time, upon 24 hours prior notice (and without notice in case of emergency) to:

(i) enter the Network operations center and any other portion of the Network for the purpose of inspecting, monitoring and evaluating the operation, administration, maintenance, repair and replacement of the Network and determining compliance with this Article VII; and

(ii) accompany and monitor any personnel of Company or its contractors performing operation, administration, maintenance, repair or replacement of the Network.

(b) State shall have the right at all times to electronically monitor the operations and status of the Network at the State's communications operations center and recovery site.

Section 7.6 Renewal, Replacement and Technology Upgrades.

(a) Throughout the Term, at its sole cost and expense, Company shall (i) make all renewals and replacements to the Network as shall be necessary to satisfy all Performance Standards and (ii) subject to subsection (b) below, incorporate into Phase 1 of the Network all generally recognized advances and improvements in technology, materials and equipment applicable and available to fiber optic communications systems and equipment ("technology upgrades"), but only to the extent necessary to keep Phase 1 of the Network up to date with technology upgrades then being generally implemented with respect to comparable fiber optic communication systems and equipment.

(b) Company shall be obligated to undertake technology upgrades under subsection (a)(ii) above only if, when and to the extent funds are available for such work from the following sources:

(i) the Technology Upgrade Fund;

(ii) additional Project Debt, which Company shall be obligated to issue for funding technology upgrades if and when (A) permitted by the terms of existing Project Debt and, if required under the terms of existing Project Debt, consented to by the Lenders, and (B) the proceeds thereof plus any other available funds under this subsection (b) will be sufficient to pay the estimated cost of a reasonably conceived minimum scope of technology upgrade work;

(iii) federal and/or other governmental grants and/or insurance proceeds eligible or available to pay for such technology upgrades; and

(iv) manufacturer grants and credits available for such technology upgrades.

(c) Any right Company has under subsection (b) above to defer technology upgrades shall have no effect on the scope or interpretation of Company's obligations and indemnities under this Agreement.

(d) Nothing in this Section shall be construed to require technology upgrades solely to increase the transport capacity of the Network.

Section 7.7 Rate Structures and Publication.

(a) At all times throughout the Term Company shall maintain, offer, accept, implement and adhere to written, uniform and non-discriminatory rates and charges for all similarly situated customers and potential customers for such customer's rights to use or access the Network or to become Collocating Customers. Company from time to time may modify, supplement or revise its rates and charges for use of or access to the Network, so long as such rates and charges, as modified, supplemented or revised, continue to provide uniform and non-discriminatory rates and charges for use of or access to the Network or for collocating fiber optic cable for similarly situated customers and potential customers. The term "similarly situated customers and potential customers" is intended to permit Company to maintain, offer, accept, implement and adhere to different rates and charges for different classifications of customers (including but not limited to Collocating Customers) based on commercially reasonable considerations and distinctions, such as but not limited to the volume of capacity in the Network utilized or the volume of data transported by a particular customer or the length of time for which any particular customer commits to the utilization of a specified volume of capacity in the Network or a specified volume of data transported.

(b) Company shall file with State, at least ten Days prior to effectiveness, true and complete copies of all written schedules or other documents which identify and describe

Company's various classifications of customers and potential customers (including but not limited to Collocating Customers) and the rates and charges applicable to each such classification, and all modifications, supplements and revisions of such classifications, rates and charges prepared pursuant to subsection (a) above.

(c) At Company's expense, State shall publish Company's classifications, rates and charges for use of or access to the Network and for collocating fiber cable and all modifications, supplements and revisions thereto. In addition, State shall publish the provisions of this Agreement on the consideration State is receiving from Company (primarily Section 3.3). Publication shall be made in the same manner by which the Commissioner of MnDOT publishes notices of other formal actions required by law to be published.

(d) Company recognizes, acknowledges and confirms that its covenants in Section 5.12 and this Section 7.7 necessarily require that it offer use of and access to the Network, and collocation of fiber cable on the terms of this Agreement, to every customer and potential customer (including but not limited to Collocating Customers) which is financially qualified under general commercial practices.

Section 7.8 Affiliate Transactions. In the event Company, any Company Related Party, any entity with a direct financial interest in the Network, or any entity otherwise controlling, controlled by or under common control with Company or with an entity having a direct financial interest in the Network is or becomes a user of the Network or a Collocating Customer, Company shall be obligated to:

(a) execute a User Agreement with such entity complying with Section 9.2 and setting forth all the pricing, terms and conditions respecting use of and access to the Network or the collocation of fiber cable by such entity;

(b) deliver to State a true and complete copy of the User Agreement and Company's accounting records respecting revenues from such entity within ten Days after request therefor; and

(c) charge such entity the same rates and charges as it does for similarly situated, unaffiliated, non-interested customers and users of the Network or similarly situated, unaffiliated, non-interested Collocating Customers.

Section 9.2 User Agreements. Each User Agreement at a minimum shall:

- (a) subject to the prior rights of Lenders pursuant to Article XVIII, be fully assignable to any person or entity succeeding, voluntarily or involuntarily, to the interests of Company in the Network, including but not limited to State, without liability by such assignee for acts, omissions or circumstances occurring or arising prior to the effective date of assignment;
- (b) expressly provide that the user obtains no property interest or estate in or lien upon the Right of Way or the Network or any components thereof or any Intellectual Property, and that the User Agreement does not run with the Right of Way or the Network and is not binding upon any successor owner of the Network unless and until expressly assumed in writing by such successor owner;
- (c) expressly provide that it is subject and subordinate to this Agreement and State's rights and protections hereunder;
- (d) provide a term, including all options and rights to extend or renew, expiring not later than the stated expiration date of the Term of this Agreement;
- (e) expressly provide that all liens, claims and charges of the user at any time shall not attach to any interest of State, MnDOT or DOA in Right of Way or in any other property;
- (f) expressly contain the user's agreement and acknowledgment that State owes no duties, obligations or liabilities to the user and has not assumed the User Agreement, unless and until State assumes in writing the User Agreement;
- (g) not be assignable by Company except to any Lender or any successor owner of the Network;
- (h) prohibit entry onto the Right of Way by the user or its contractors except (i) where necessary to cure a material failure of Company to perform its obligations or (ii) in emergency circumstances, and in either case only in compliance with an access Permit issued by MnDOT and in compliance with the O,A&M Plan;
- (i) be consistent in all other material respects with the applicable terms and conditions of this Agreement, Permits, other Regulatory Approvals, the Utility Accommodation Policy and Laws and Regulations, including but not limited to any requirements and limitations regarding entry onto and access to Right of Way; and
- (j) not be amended with respect to the foregoing matters without the prior written consent of State and DOA.

ARTICLE XI
RELATIONSHIP WITH TRANSPORTATION FACILITIES
AND OTHER COMMUNICATIONS FACILITIES

Section 11.1 Other Fiber Optic Systems.

(a) State hereby agrees that it shall not grant a license, permit or other right to any other party to construct, install and operate a fiber optic communications system longitudinally within the Freeway Right of Way locations specifically identified on Table F of Exhibit A, including any portion of the Optional Phase 1 Routes for which Company validly exercises its option in accordance with Section 5.11(a). State and Company acknowledge that the foregoing covenant is consistent with and given pursuant to the State's authority under Section 253(c) of the Telecommunications Act of 1996 to continue to manage trunk highways to preserve and protect the health, safety and welfare of the traveling public and the State's authority which existed prior to the passage of the Telecommunications Act of 1996 as described in Section 1.7. State and Company also acknowledge that the foregoing covenant will assist Company in financing development of a Network which reaches rural areas of Minnesota.

(b) The right granted under subsection (a) above shall expire on the first to occur of (i) ten years after the last Acceptance Date for Phase 1 or (ii) termination of this Agreement for any reason.

(c) The right granted under in subsection (a) above is subject to the following exceptions and exclusions:

(i) any fiber optic communications systems and equipment in place within or adjacent to any Freeway Right of Way as of the Agreement Date, whether a perpendicular crossing or a longitudinal installation, and all modifications and upgrades to and replacements of such systems and equipment;

(ii) any fiber optic or other communications systems and equipment which is located within or adjacent to Freeway Right of Way, whether constructed and installed before or after the Agreement Date, and which is used solely as set forth in Section 3.4;

(iii) any wireless form of communications system, such as cellular, personal communications services, specialized mobile radio and direct satellite transmission, receiving, transmitting or power generation facilities, which is located within or adjacent to Freeway Right of Way, subject, however, to the provisions of Section 11.7;

(iv) any fiber optic cable crossing Freeway Right of Way at an angle approximately perpendicular to the direction of the Freeway Right of Way, and any grants of Permits for such purpose made at any time before or after the Agreement Date;

(v) any fiber optic cable and related equipment installed longitudinally within or adjacent to Freeway Right of Way pursuant to State's grant of a Permit or other right therefor after the Agreement Date, provided that:

(A) such installation is limited to a bridge span, underpass, overpass or tunnel; or

(B) MnDOT determines that such installation is necessary to avoid hardship or other special circumstances and the total length for such installation does not exceed (I) 1,500 feet at any one location or (II) 1,700 feet in the aggregate;

(vi) the facilities of Collocating Customers; and

(vii) all communications systems and equipment of every type and kind located within or adjacent to any Non-Freeway Highway or within or adjacent to any Freeway Right of Way not specifically identified on Table F of Exhibit A.

(d) The rights granted under subsection (a) above shall cease as to an Optional Phase 1 Route, and, subject to Section 5.11(b), State shall be free to explore other opportunities with any other party to deploy fiber in such Optional Phase 1 Route, whenever Company's right to include the same in Phase 1 expires pursuant to Section 5.11(a). If, however, Company and State later include an Optional Phase 1 Route in the Network pursuant to Section 5.11(b), then the rights granted under subsection (a) above shall thereupon apply to such Optional Phase 1 Route.

(e) If at any time during the period commencing ten years and expiring 20 years after the last Acceptance Date for Phase 1 State desires to offer the opportunity to place an additional fiber optic communication system within any Freeway Right of Way location specifically identified on Table F of Exhibit A and such fiber optic system is not one described in subsection (c) above, and if at such time there exists no Company Default, then State shall deliver to Company written notice setting forth such opportunity and the portions of such Freeway Right of Way on which State is then offering the opportunity, and Company shall have a first right of exclusive negotiation with the State for the design, permitting and installation of such fiber optic system. Such exclusive right of first negotiation shall expire as to the Right of Way locations encompassed in State's written notice if for any reason State and Company are unable or unwilling to enter into a binding, written agreement respecting such additional fiber optic system within 120 Days after State delivers its written notice to Company. During such 120-Day period State and Company shall engage in good faith negotiations, without obligation, however, to agree upon any particular terms or conditions. If and when such right expires without consummation of an agreement, State shall be free to use the Right of Way encompassed in State's written notice on its own, and/or to offer and grant access to such Right of Way to any other party on any terms, to design, permit, install, manage, operate and use fiber optic systems and equipment; provided that neither State nor any other party receiving an agreement from State shall interfere with Company's rights under this Agreement to use the Right of Way.

(f) While both State and Company believe this Section 11.1 is fully valid and enforceable, neither State nor Company warrants or represents the validity or enforceability of this Section 11.1 either on its face or as applied.

Section 11.2 Relocations.

(a) If (i) any portion of the Network must be relocated due to State's reconstruction, modification, change in grade, expansion or relocation of any State Trunk Highway, (ii) such project is identified in the State Transportation Improvement Program through the end of Fiscal Year 2000 published as of the Agreement Date (the "STIP"), and (iii) State commences any work on such project by the end of Fiscal Year 2000, then Company shall assume and pay all costs associated with such required relocation.

(b) If (i) any portion of the Network must be relocated due to State's reconstruction, modification, change in grade, expansion or relocation of any State Trunk Highway, (ii) such project is not identified in the STIP and (iii) State commences any work on such project by the end of Fiscal Year 2000, then State shall assume and pay all costs associated with such required relocation.

(c) If (i) any portion of the Network must be relocated due to State's reconstruction, modification, change in grade, expansion or relocation of any State Trunk Highway and (ii) State commences any work on such project after the end of Fiscal Year 2000, then Company shall assume and pay 80% as to Phase 1 and 90% as to Phase 2 and State shall assume and pay 20% as to Phase 1 and 10% as to Phase 2 of all costs associated with such required relocation.

(d) If any portion of the Network must be relocated due to State's reconstruction, modification, expansion or relocation of a MNet hub or a MnDOT regional office, or due to State's election to require relocation from building space in which Company has located Equipment pursuant to Section 5.2(c)(vii) then (i) Company shall assume and pay 80% as to Phase 1 and 90% as to Phase 2 and State shall assume and pay 20% as to Phase 1 and 10% as to Phase 2 of all costs associated with such required relocation of Network fiber and (ii) Company shall assume and pay all costs associated with such required relocation of Equipment at the site.

(e) When a relocation is required, State shall, in consultation with Company, designate a new route for the affected portion of the Network. Company shall implement the relocation in compliance with the Utility Accommodation Policy, applicable Permits, and the provisions of this Agreement relevant to construction. Company shall implement the relocation on a schedule which will not delay or interfere with MnDOT's construction schedule. To the maximum extent practicable, Company shall effect a cutover of operations from the original portion of the Network to the relocation portion without disruption in service. State shall have no liability for any disruption in service arising out of a required relocation.

(f) Whenever relocation of the Network is required, Company shall have the right, at its election, to relocate the affected portion of the Network to property not owned or controlled by MnDOT; but if Company makes such election, then (i) the costs chargeable to State for the

relocation shall not exceed what the State would incur upon relocation to the new route State designates under subsection (e) above and (ii) any rights under Section 11.1 which otherwise would apply to the affected portion of the Network shall cease.

(g) If State closes or abandons any Right of Way in which the Network is located, Company nonetheless may elect to keep the Network in place, but only if and for so long as the continued presence and operation of the Network in such closed or abandoned Right of Way will not interfere with subsequent uses thereof or with MnDOT's ability to fulfill any legal or contractual obligations MnDOT owes to others respecting such Right of Way. If and when relocation from such closed or abandoned Right of Way is required, allocation of the costs of relocation shall be governed by subsection (a), (b) or (c) above, whichever is applicable.

(h) To the extent State's actions requiring relocation of the Network constitute an event of Force Majeure, the provisions of Section 10.4 shall govern Company's and S&W's right to extension of time therefor.

(i) Whenever any portion of the Network must be relocated, Company also shall relocate or cause to be relocated the corresponding portion of any fiber optic cable and equipment of Collocating Customers. State shall have no liability for any costs associated with such required relocation of Collocating Customers.

Section 11.3 Relationship with Intelligent Transportation Systems. State is and shall remain the exclusive owner of all right, title and interest in and to, and Company and S&W disclaim and renounce any right, title or interest in or to, any and all ITS components, systems, equipment and applications (including but not limited to the TMC, the equipment at remote locations operated and monitored at the TMC and all fiber optic cable constructed and installed by MnDOT for the TMC), any and all software, software documentation, source code, source code documentation and modifications or enhancements thereto used or applied in the operation of ITS, and any and all data and information generated by ITS operations and applications. Company's and S&W's right of access to such data and information shall be the same as that of any member of the general public. The foregoing shall not disqualify Company or S&W from responding to and being considered under any request for bids, proposals or qualifications which MnDOT may issue in the future respecting Intelligent Transportation Systems. For the foregoing purposes, the physical point of demarcation between the Network and any Intelligent Transportation System shall be at each interconnecting Node.

Section 11.4 Non-interference with Rights of Way Operations, Maintenance and Improvement. MnDOT, at its expense except to the extent provided otherwise in Section 8.2(b), shall have the right at any time (and without liability to Company or S&W for any damages it may suffer, except as specifically provided in subsection (b) below) to modify existing transportation facilities, to construct new transportation facilities and to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new transportation facilities regardless of the impact of such activities on the Network or its operations; provided, however, that:

(a) MnDOT shall confer with Company (and, during construction of Phase 1, S&W) as to activities to be performed in the ordinary course on such transportation facilities which might reasonably be expected to adversely impact construction, operation, maintenance or repair of the Network or to entail charges to Company under Section 8.2(b), and shall use reasonable efforts to coordinate such activities with Company and S&W in order to reduce or eliminate such adverse impact;

(b) to the extent the modification of existing transportation facilities or construction of new transportation facilities entails or requires relocation of the Network or any Equipment or the fiber optic cable and equipment of Collocating Customers, the provisions of Section 11.2(a) shall govern MnDOT's financial responsibility therefor;

(c) in the event emergency maintenance, repair or replacement is required for the Network, MnDOT shall use diligent efforts to delay, reschedule or relocate any non-emergency work of MnDOT on the related transportation facilities to accommodate such emergency work on the Network; and

(d) to the extent MnDOT's actions constitute an event of Force Majeure, the provisions of Article X shall govern Company's or S&W's right to extension of time therefor.

Section 11.5 Utility Crossings. In the course of construction and operation of the Network, Company and S&W shall not damage or interfere with any utilities crossing the Network, and shall locate the Network so as to minimize such damage or interference. This provision is not intended to confer upon any utility as a third-party beneficiary or otherwise any right or benefit to which it is not otherwise entitled by Laws and Regulations or contract, or to excuse any utility from its notification, marking, damage repair and other obligations under Ch. 216D, Minnesota Statutes.

Section 11.6 Access Over Non-State Properties The interconnection of certain MNet hubs or MnDOT regional offices to the Network may depend on Company's ability to obtain access to local streets, to rights of way or to other properties which are not State Trunk Highways in order to install fiber and related improvements. At Company's request and expense, State shall assist Company in applying for, negotiating and obtaining agreements and approvals for access over such streets, rights of way or other properties.

Section 11.7 Right of Negotiation for Wireless Facilities.

(a) Company shall have and is hereby granted a right of negotiation with the State for a modification to this Agreement providing to Company rights of access to Right of Way for Phase 1 for the purpose of designing, permitting, siting, installing, leasing, licensing, managing, operating and providing use to others of wireless communications facilities, including but not limited to cellular, personal communications services (so-called "PCS") facilities, specialized mobile radio (so-called "SMR") and microwave facilities. Such right of negotiation shall expire if for any reason State and Company are unable or unwilling to enter into a binding, written modification to this Agreement respecting such wireless facilities by April 30, 1998. State and

Company may, but are not required to, extend such deadline by mutual written agreement. During such period State shall, at Company's request, engage in good faith negotiations, without obligation, however, to agree upon any particular terms or conditions. If and when such right expires without consummation of a modification to this Agreement, State shall be free to use such Right of Way on its own, and/or to offer and grant access to such Right of Way to any other party on any terms, to design, permit, site, install, lease, license, manage, operate and use wireless facilities; provided that neither State nor any other party receiving an agreement from State shall interfere with Company's rights under this Agreement to use the Right of Way for construction, maintenance and operation of the Network. Such right of negotiation is non-exclusive; and State may during the negotiation period engage in discussions with others concerning any potential program, arrangement or procurement for wireless facilities in Right of Way, except that State shall not engage in negotiations with others concerning any master agreement or arrangement for installing wireless facilities system-wide on Freeway Right of Way. During the negotiation period, State shall not disclose to others the substance of its negotiations with Company, except to the extent required by court process or applicable Laws and Regulations.